case. Mr. Lambert of the Barretto Shipping & Trading Co. said he was approached by Mr. Aus Suriatna of the Indonesia Sugar Line and the Indonesia Samudera Line to handle the cargo of rice from the "Planet". However, owing to the fact that his company was not put in funds by the owners before the arrival of the "Planet" nothing came of the matter. This had no possible bearing on any subsequent arrangement between the appellant and Goh Leh. Tan Yat Chin who worked for the appellant as a clerk on the "Planet" and "Incharran" spoke to having discussed tally clerks on board the ship with Goh Leh. He rendered his bills to and was paid by the respondents. So far from this witness's evidence being consistent only with the respondents' case, it appears to their Lordships to give some support to the appellant's evidence that Goh Leh did concern himself with the lighterage contract to his own evidence.

Respondents' counsel presented an elaborate reconstruction of the history of the case in which Khoo prominently figured as the villain of the piece. He was not disposed to argue that Khoo did not make a contract with the appellant for the lighterage in regard to both vessels, a contract which, he conceded, probably included demurrage. He proceeded, however, to suggest that Khoo had deceived the respondents into thinking that the contract was "Free Demurrage" by having these words typed in after the appellant had signed the bills. His motive in doing so is not clear, but it may have been to retain his profit on the on-carriage. If this, however, is what happened and Khoo was acting on behalf of the owners in employing the appellant it is difficult to understand why the appellant did not sue Khoo and/or the owners. He would have had a stronger case against these defendants as he would have obtained corroboration from the bill heads which included the names of the owners. The explanation suggested for his not suing the owners that the companies were registered in Indonesia is not convincing. This reconstruction of the history is however in the absence of Khoo from the witness-box pure speculation. No criticism can certainly be made of the appellant for his failure to call Khoo as a witness, if he had as suggested swindled the appellant.

A number of difficulties undoubtedly arise on the presentation of the case both from the appellant's and the respondents' point of view. It may be that the whole truth has not been disclosed. But in that state of affairs with two possible explanations, the safest course is in their Lordships' view to accept the trial Judge's estimate of the credibility of the two witnesses, the appellant and Goh Leh. If this be the correct view, it becomes necessary to consider how far the appellant's evidence will carry him.

The conclusion arrived at by the Court of Appeal was to a large extent based on the view that they were entitled to interfere with the trial Judge's findings because these were inferences drawn from the facts rather than the findings of specific facts. An appellate tribunal will more readily interfere with the trial Judge's decision on the former than on the latter (see *Benmax* v. *Austin Motor Co. Ltd.*).[3] In so far, however, as the trial Judge's decision was based on the credibility of the appellant and Goh Leh this was the finding of the specific fact that an agreement was reached between them, thus depending on the evaluation of their evidence as witnesses. It may be that the Court of Appeal's acceptance of the evidence of Goh Leh depended on inferences from documents, but these inferences are not sufficient in their Lordships' opinion to reinstate Goh Leh as a reliable witness in face of the trial Judge's deliberate refusal to accept this evidence as truthful. If the appellant is an honest witness whose evidence must be accepted, this would establish that a contract was made between him and Goh Leh for lighterage charges which included demurrage. Respondents' counsel conceded that in these circumstances the personal liability of the respondents was involved.

Upon the whole matter their Lordships have reached the conclusion that there was not sufficient material before the Court of Appeal to entitle them to reject the result arrived at by the trial Judge.

They will accordingly report to the Head of Malaysia their opinion that the appeal should be allowed with costs in the Court of Appeal and the judgment of Ambrose J. dated 28th May 1960 restored, and that the respondents should pay the costs of this appeal. The appellant having been granted leave to prosecute his appeal *in forma pauperis* these costs should be taxed upon the pauper scale.

Solicitors: *Coward, Chance & Co.*; *E. F. Turner & Sons.*

PUI MIAW v. BONG KEE MAN

[A.C.J. (Harley J.) January 15, 1964]

[Kuching — Civil Appeal No. A/12 of 1963]

Contract—Broker claiming agreed remuneration on abortive sale—Part satisfaction—Claim of balance—Plea of non est factum duress and illegality by proposed vendor—(Sarawak) Trade Licences Ordinance (Cap. 33) —Definition of broker—Object of Ordinance—Collection of revenue.

The appellant asked the respondent who was a grocer to find a buyer for the appellant's two pieces of land. The appellant gave the respondent the documents of title relating to the lands and also a written authorisation to sell the lands at $90,000. About 10 days later the respondent found a prospective purchaser but the appellant refused to accept a deposit on the

stated price. The appellant then agreed by a document in writing dated September 24, 1962 to pay the respondent $1,800 within one week. A translation of the document reads: "I have two pieces of land totalling 16.75 acres at Batu Kawa Road, river bank. Originally have entrusted Mr. Bong Kee Man to sell at the price of $90,000 exactly. Owing to the fact that my wife disagrees to sell these gardens and with the consent of both parties and the purchaser, I agree to compensate Mr. Bong Kee Man $1,800 exactly. Payment in full within one week. This document is especially made in evidence." On October 13, 1962 the appellant gave a cheque for $500 to the respondent in part satisfaction of the said sum of $1,800. The respondent then commenced proceedings in the Court below claiming the balance of $1,300 on which claim the learned Magistrate gave judgment in his favour. On appeal the appellant contended that: (i) the learned Magistrate failed to give sufficient consideration to the appellant's plea of *non est factum* and (ii) the respondent was barred from suing for reward as a broker because, contrary to law, he had no licence to trade as a broker.

Held: (1) on the pleadings and from the appellant's performance in the witness box it was clear that though the appellant was illiterate he was a perfectly intelligent and shrewd person and that he knew what he was signing. There was no evidence of duress, inducement or intimidation;

(2) the basic object of Sarawak Trade Licences Ordinance (Cap. 33) in requiring licences from people carrying on business is to collect revenue. Therefore the contract made by the respondent if he ever was a broker was at no stage illegal.

Observations on Sarawak Trade Licences Ordinance (Cap. 33) section 14(i) and definition of "broker".

Cases referred to:—

(1) *Chai Sau Yin* v. *Liew Kwee Sam* [1962] A.C. 304.

(2) *Wetherill* v. *Jones* (1832) 110 E.R. p. 82.

(3) *Brown* v. *Duncan* 109 E.R. p. 385.

(4) *Cope* v. *Rowlands* (1836) 150 E.R. p. 710.

(4a) *Johnson* v. *Hudson* 11 East 180; 110 E.R. 973.

(5) *Anderson* v. *Daniel* [1924] 1 K.B. p. 138.

(6) *St. John Shipping Corporation* v. *Joseph Rank Ltd.* [1957] 1 Q.B. 267.

(7) *Victorian Daylesford Syndicate Limited* v. *Dott* [1905] 2 Ch. p. 624 at p. 629.

(8) *Chop King Foh* v. *Chong Boo Khoo* [1957] S.C.R. 109.

(9) *Callisher* v. *Bischoffsheim* (1870) 5 Q.B. 449, at p. 452.

CIVIL APPEAL.

T. O. Thomas for the appellant.

S. Sahathavan for the respondent.

Cur. Adv. Vult.

Harley J.: Respondent (plaintiff in the lower Court) arranged a deal in land as a "broker" or estate agent. The question was whether he could claim remuneration from the vendor of the land, who is the appellant (defendant in the lower Court).

The facts of the case presented in the lower Court were set out by the learned Magistrate as follows:

"In this action the plaintiff sues upon a promissory note and claims $1,300 from the defendant by way of remuneration for work done by him as agent in arranging for the sale of two pieces of land at Batu Kawa.

The plaintiff gave evidence. He described himself as a business man in groceries. He lives in Batu Kawa, knows the defendant but has no dealings with him before the transaction which is the subject matter of this action. The facts as adduced by the plaintiff, most of which are not in dispute are that on the 21st August, 1962, the defendant, asked him to find a buyer for two pieces of his land.

The defendant gave the plaintiff the documents of title relating to the land and also a written authorisation Ex. 1 (translation Ex. 1a) for him to seek purchasers of the land, the price to be $90,000.

(Ex. 1a reads as follows....)

About ten days later, the plaintiff found a purchaser who was willing to buy the land at the price of $90,000, the defendant however refused to accept a deposit on this sum and the matter was referred by the plaintiff and the intending purchaser Chai Hiang Fatt, to the Kapitan China.

The Kapitan China (PW2) saw the defendant and his wife and asked them both whether they were willing to sell the land for $90,000 or not. The Kapitan China said that at first the defendant replied that he was willing to sell. It was then that his wife refused to allow the sale. The Kapitan China then advised the defendant to discuss the matter with the plaintiff because there was a buyer who was willing to purchase. P.W.2, was later told by the plaintiff that the defendant had agreed to pay $1,800 to him. The plaintiff showed PW2 Ex. 2 (translation Ex. 2a).

PW2, then called up the defendant and asked whether he had made an agreement with the plaintiff in the terms of Ex. 2. The defendant said that he had made such an agreement, and that he would pay $1,800 within one week to the plaintiff through PW2.

Ex. 2a (translation) reads:

'I have two pieces of land totalling 16.75 acres at Batu Kawa Road, river bank. Originally have entrusted Mr. Bong Kee Man to sell at the price of $90,000 exactly. Owing to the fact that my wife disagrees to sell these gardens and with the consent of both parties and the purchaser, I agree to compensate Mr. Bong Kee Man $1,800 exactly. Payment in full within one week. This document is especially made in evidence.

24/9/62 Witness: Chang Ngee Pui Miaw'."

That recognition of debt (referred to as a promissory note in the plaint) signed by the appellant Pui Miaw, was dated 24th September, 1962. Under the agreement, payment was to be made within one week; but it was not till 13th October, 1962 that the appellant gave a cheque, and then only for part of the amount, namely $500. Plaint was filed by respondent, and paragraphs 1 and 2 thereof read as follows:

"1. By a promissory note in Chinese dated 24th September, 1962 the defendant promised to pay to the plaintiff the sum of $1,800 within one week of the date thereof by way of remuneration for work done by the plaintiff as an agent in arranging for the sale of two pieces of land at Batu Kawa, Kuching.

2. In pursuance of the said promissory note the sum of $500 was paid by the defendant leaving a balance of $1,300."

It was thus that respondent's (plaintiff's) claim for $1,300 arose, on which claim the learned Magistrate gave judgment in his favour. From that judgment the former defendant appeals. The one and only ground of appeal relied on is

that (a) The learned Magistrate misdirected himself on the law applicable to the case. (Ground (b) was abandoned by Mr. Thomas).

The Court has already criticised Mr. Thomas, and Mr. Thomas has sufficiently apologised for, the vague nature and phrasing of his memorandum of appeal. During the hearing of the appeal, Mr. Thomas specified his grounds with more particularity as follows:

(1) The learned Magistrate failed to give sufficient consideration to the appellant's plea of *non est factum*, the contention being that he acted under duress.

(2) That respondent was barred from suing for reward as a broker because contrary to law, he had no licence to trade as a broker.

As for ground (1), there is no substance in it. Para 1 of the defence referred loosely to "false representations" and Para 2 stated that the sum of $500 was paid to respondent on the understanding that the appellant "would not threaten" the respondent. Those two paragraphs form but a shaky foundation for a plea of *non est factum*. The defence was set out as follows:

"1. The defendant denies that there was any agreement to the $1,800. The defendant gave an option, without consideration, to the plaintiff to find a purchaser for his land and the plaintiff failed to find a buyer. The defendant contend that he was induced by false representations to sign the promissory note dated the 24th September, 1962.

2. The defendant denies that he ever agreed to pay the plaintiff $500 but the defendant contends that $500 was handed to the Kapitan China at Batu Kawa at the requests of the plaintiff and the Kapitan China passed the $500 to the plaintiff on the understanding that the plaintiff would not threaten the defendant.

3. The defendant contends that the promissory note was made without consideration or past consideration.

4. The defendant will further contend that the consideration if any, was tainted with illegality in that the plaintiff without possessing a trade licence, purported to carry on business as a broker, where a trade licence was necessary...."

On such a pleading, it is more than doubtful whether the appellant should ever be allowed to raise a plea of *non est factum*, or to allege that he signed the "promissory note" under duress. However, the learned Magistrate quite sufficiently dealt with the argument as follows:

"The defendant gave evidence. On the whole he was a most unimpressive witness. His evidence was in many parts self contradictory and he was distinctly evasive. His case is that although he signed Ex. 1 and Ex. 2, he did not know their contents which were not explained to him. That he paid the $500 to avoid trouble, that the reason for the sale falling through was not his wife's refusal, but because PW3 wished to pay by instalment, which he the defendant could not agree to. He said he was drunk when he signed Ex. 1, and didn't know what Ex. 2 was all about, he paid the $500 because he feared he would be assaulted. In re-examination he stated that he paid $500 partly because of the trouble the plaintiff had taken over finding a purchaser and partly because he was frightened.

It is true he is an illiterate, but from his performance in the witness box it was clear that he is a perfectly intelligent and shrewd person, and I am quite satisfied that he well knew what he was signing. Indeed, there was no question of his complaining to the Kapitan China (PW3) of his being intimidated....

Finally Mr. Seah invited the Court to consider for itself the question of inducement. After carefully considering all the circumstances of this case I have in my view no evidence before me which would justify my holding that pressure was put upon the defendant to sign the promissory note. The defendant certainly did not strike me as a person likely to allow himself to be bullied by any one."

As I have already stated, there was no substance in Mr. Thomas' first point. His second point is that the contract was illegal because the "broker" (respondent) was not a licensed "broker", and therefore he cannot be permitted to recover on his contract. To this point also I think that the learned Magistrate gave careful consideration, properly directed himself on the authorities and came to the right conclusion; but as it is the main, indeed almost the sole, ground of appeal, I propose to consider precedents referred to in the learned Magistrate's judgment and others further mentioned by Mr. Thomas on this appeal.

Mr. Thomas bases his contention of illegality going to the root of the contract on the following section of the Trade Licensing Ordinance (Cap. 33):—

"3. — (1) Any person who, whether alone or in partnership or association with others, and whether as principal, agent or manager, or in any other capacity, carries on in Sarawak any business in respect of which a trading licence is not for the time being in force, or who carries on such business in any premises or place, or by means of any vessel or vehicle or other means or thing whatsoever, to which such licence does not extend, shall be guilty of an offence: Penalty a fine of one thousand dollars."

Perhaps I may venture to state the law shortly and simply as I understand it. Firstly, a contract may be forbidden by the law: such a contract cannot be enforced. *Chai Sau Yin* v. *Liew Kwee Sam.*[1] Secondly, a statute may disapprove a contract, but a distinction must be drawn between statutes which, though they impose penalties, have revenue collection as their sole object, and those which are framed for the protection of a particular class of persons or for the protection of the public as a whole. I am indebted to the learned Magistrate, and to Mr. Thomas, for the citation of some of the leading authorities which illustrate this principle. Before quoting precedents, however, it may clarify understanding if one considers one very simple illustration of the principle:— A grocer must have a trading licence; but it could scarcely be contended in common-sense that, if I buy goods from his shop on credit, and then discover that he has not taken out, or has not renewed, his trading licence, therefore I can evade payment for the goods.

In *Wetherill* v. *Jones*[2] the plaintiff sued for the price of spirits sold and delivered. A Statute of George IV provided that no spirits should be sent out of stock without a permit.

The court held that the permit obtained by the plaintiff was irregular because of his own fault and that he was therefore guilty of a violation of the law, but that the statute did not prohibit the contract. Tenterden C.J. stated the law as follows:

"Where a contract which a plaintiff seeks to enforce is expressly, or by implication, forbidden by the statute or common law, no court will lend its assistance to give it effect: and there are numerous cases in the books where an action on the contract has failed, because either the consideration for the promise or the act to be done was illegal, as being against the express provisions of the law, or contrary to justice, morality, and sound policy. But where the consideration and the matter to be performed are both legal, we are not aware that a plaintiff has ever been precluded from recovering by an infringement of the law, not contemplated by the contract, in the performance of something to be done on his part."

In 1836, it was held in *Brown* v. *Duncan* [3] that an unlicensed distiller, subject to a penalty of £200 for selling liquors without a licence, could nevertheless recover the purchase price on a contract of sale:

"We think that the plaintiffs are entitled to recover. There has been no fraud on the part of the plaintiff on the Revenue, although they have not complied with the regulations which it has been thought wise to adopt, in order to secure (as far as may be) the conducting of the trade in such a way as is deemed most expedient for the benefit of the Revenue. The cases of *Hodgson* v. *Temple* (5 Taunt 181), and *Johnson* v. *Hudson* (11 East, 180), are in favour of the plaintiffs' right to recover. In the first of those cases a distiller had sold spirits to a rectifier who was also a retailer, with the knowledge that his vendee filled both characters; and had delivered the spirits, not at the place in which the retail trade was carried on, but at the place in which he carried on the business of a rectifier, and to which they were delivered, not in the defendant's name, but in the name of another person. That was certainly a very strong case, because there, as it was contended, that was clearly and knowingly to a certain degree violating the law. The Court of Common Pleas however thought the plaintiffs were entitled to recover. In *Johnson* v. *Hudson* the action was brought to recover the price of tobacco segars; they had been imported into this country from Guernsey; they were sold by the plaintiffs to Hudson, and the plaintiffs had no licence as dealers in tobacco, wherefore it was contended, that they could not recover. The Court doubting, indeed whether the plaintiffs from this single instance could be considered as dealers, held it not to be such an illegality as to deprive the owner of the goods, who had sold them to another, of his right to recover the price. These cases are very different from those where the provisions of Acts of Parliament have had for their object the protection of the public, such as the Acts against stock-jobbling, and the Acts against usury. It is different also from the case where a sale of bricks, required by Act of Parliament to be of a certain size, was held to be void because they were under that size. There the Act of Parliament operated as a protection to the public as well as to the Revenue, securing to them bricks of the particular dimensions. Here the clauses of the Act of Parliament had not for their object to protect the public but the Revenue only. Neither is this one of that class of cases where an attempt is made to recover the price of prohibited goods. On the authority of the two cases which I have mentioned, we think the plaintiffs are entitled to retain their verdict." (Lord Tenterden C.J. at p. 387).

Brown v. *Duncan* was referred to in the case of *Cope* v. *Rowlands*.[4] That case concerned an unlicensed stockbroker. Parke B. at p. 710 said:

"The sole question is, whether the statute means to prohibit the contract? In the cases of *Brown* v. *Duncan* (10 B. & Cress. 93; 5 M & Ry. 114), and *Wetherell* v. *Jones* (3 B. & Ald. 221), both cases of violation of the Revenue Laws, the particular contract sued upon was held not to be interdicted; and in *Johnson* v. *Hudson* (11 East, 180), as explained in the judgment of the Court of King's Bench in *Foster* v. *Taylor* (5 B. & Ald. 898; 3 Nev. & Man. 244), the provision of the statute, which requires persons dealing in tobacco to take out a licence, was held to be a regulation attaching to the plaintiff personally, and affecting him with the penalty, for the purpose of securing the licence duty only, and not forbidding the contract itself: though it is to be observed, that some little doubt has been thrown on the particular case in a very learned work, 2 *Starkie on Evidence*, 886. The principle, however, of that decision, as above explained, is correct; and the question for us now to determine is, whether the enactment of the statute 6 Ann. c. 16. (altered as to the amount of penalty by 57 Geo. 3, c. 60), is meant merely to secure a revenue to the city, and for that purpose to render the person acting as a broker liable to a penalty if he does not pay it? or whether one of its objects be the protection of the public, and the prevention of improper persons acting as brokers? On the former supposition, the contract with a broker for his brokerage is not prohibited by the statute; on the latter it is: for it cannot be permitted to a person to recover a compensation for an act which the law intericts him from doing. In order to decide this point, it is only necessary to look at the statute itself. If its object had been simply the pecuniary advantage of the Mayor and Corporation, it would have been wholly unnecessary to have made any provision for securing the good conduct of the persons admitted. The more that should be allowed to practise, the larger the revenue of the city; but the enactment, that all persons who should act as brokers should be admitted by the Court of Mayor and Aldermen under such resbehaviour as the Court should think fit and reasonable, shews clearly that the legislature had in view, as one object, the benefit and security of the public in those important transactions which are negotiated by brokers. The clause, therefore, which imposes a penalty, must be taken (in the language of Lord Holt, above referred to) to imply a prohibition of all unadmitted persons to act as brokers, and consequently to prohibit, by necessary inference, all contracts which persons make for compensation to themselves for so acting; and this is the contract on which this action (so far as it relates to brokerage) is brought."

The headnote of *Johnson* v. *Hudson* [4a] cited above, reads as follows (110 E.R. p. 973):

"A factor selling a parcel of prize manufacture tobacco, consigned to him from his correspondent at Guernsey, of which a regular entry was made on importation, but without having entered himself with the Excise Office as a dealer in tobacco, nor having any licence as such, may yet maintain an action against the vendee for the value of the goods sold and delivered; and this though the tobacco were sent to the defendant without a permit, at his desire; there being no fraud upon the Revenue, but at most a breach of Revenue regulations protected by penalties: even if such factor could, upon this single and accidental instance, be considered as a dealer in tobacco within the meaning of the stat. 29 Geo. 3, c. 68, s. 70, which requires every person who shall deal in tobacco first to take out a licence under a penalty."

Anderson v. *Daniel* [5] and *St. John Shipping Corporation* v. *Joseph Rank Ltd.*[6] are more modern authorities for the principles cited in the earlier cases.

I would quote the following passage from the judgment of Buckley J. in *Victorian Daylesford Syndicate Limited* v. *Dott* [7] at p. 629:

"The next question is whether the Act is so expressed that the contract is prohibited so as to be rendered illegal. There is no question that a contract which is prohibited, whether expressly or by implication, by a statute is illegal and cannot be enforced. I have to see whether the contract is in this case prohibited expressly or by implication. For this purpose statutes may be grouped under two heads — those in which a penalty is imposed against doing an act for the purposes only of the protection of the revenue, and those in which a penalty is imposed upon an act not merely for revenue purposes, but also for the protection of the public. That distinction will be found commented upon in numerous cases, including those which have been cited of *Cope* v. *Rowland* and *Fergusson* v. *Norman*. Parke B. in the former case says the question to determine is whether the Act is 'meant merely to secure a revenue to the city, and for that purpose to render the person acting as a broker liable to a penalty if he does not pay it? or whether one of its objects be the protection of the public, and the prevention of improper persons acting as brokers?' If I arrive at the conclusion that one of the objects is the protection of the public, then the act is impliedly prohibited by the statute, and is illegal."

In the instant appeal before this Court, it cannot be maintained that the intention of the Sarawak Ordinance Cap. 33 is to impose restrictions on, or to prohibit, contracts made by "brokers." Brokers are not even mentioned, and the only section which could be construed as referring to them is section 14(1) of the First Schedule which requires "a licence to carry on the business of a general trader or any other business not otherwise specified in this Schedule." Clearly the legislature has no more particular views of brokers than it has of grocers: its basic object in requiring licences from people carrying on business is to collect revenue. In consequence the contract made by this broker (respondent), if he ever was a broker, was at no stage illegal. (The Sarawak case of *Chop King Foh* v. *Chong Boo Khoo* [8] was very properly and succinctly distinguished by the learned Magistrate in his judgment). A modern authority, *Chitty* on Contracts Vol. 1, 22nd Ed. para 850 summarises the law on this point as follows:

"Aids to statutory interpretation. Where a statute imposes a penalty on one or both of the parties to a contract, as a result of their entering into the contract or of their manner of performing it, the court will consider whether on the construction and purpose of the statute the doing of the particular act is forbidden as illegal or whether it is merely rendered expensive. If the latter, it is clear that the contract itself is not prohibited. Thus where a tobacco manufacturer sued for the price of tobacco he had sold to the defendant, the facts that he was not licensed to sell tobacco and that his name was not painted on his place of business as required by statute, did not prevent him from recovering since there was nothing in the Act to prohibit every sale, and its only effect was to impose a penalty for the purpose of the Revenue on the carrying on of the trade without complying with its requirements."

Both the learned Magistrate and myself have considered at length the possibility of illegality in originating the contract; but both in his judgment and in mine the whole matter is strictly obiter because:

Both the Lower Court and this Court take the view that

(a) respondent in fact never was a broker.

(b) respondent in fact had got a licence; and this Court would add.

(c) that the original contract was never sued upon.

With regard to (a) and (b), I cannot do better than quote the words of the learned Magistrate in his judgment:

"The plaintiff has been in the grocery business for 10 years, and I accept on a balance of probabilities that he holds a general trading licence as would be required in the schedule.

Assuming for one moment that a broker required a separate licence, could it be said that the plaintiff was in *business* as a broker, because of this one transaction which it is true is of a kind usually performed by a professional broker. I think not, as this would militate against common sense. 'Business' is defined as 'any form of trade, commerce, craftsmanship, profession, calling, or other activity, carried on for the purpose of gain but does not include an office or employment or any charitable undertaking.' I find it difficult to hold that a single transaction of business necessarily implies that the doer must be in business and therefore require a licence."

As regards the third point (c) above, it must be obvious on the facts that appellant repudiated the original contract. Thereupon respondent threatened to take action and enlisted the aid of the Kapitan China. In consequence, a compromise of the original contract (Ex. 1) has reached by substituting a second contract (Ex. 2). Clearly respondent had a *bona fide* claim, and forbearance to sue, even on an illegal contract, would be good consideration for the compromise agreement:

"Every day a compromise is effected on the ground that the party making it has a chance of succeeding in it, and if he *bona fide* believes that he has a fair chance of succeeding, he has a reasonable ground for suing, and his forbearance to sue will constitute good consideration. When such a person forbears to sue he gives up what he believes to be a right of action, and the other party gets an advantage, and, instead of being annoyed with an action, he escapes from the vexations incident to it. It would be another matter if a person made a claim which he knew to be unfounded and by a compromise, derived an advantage under it: in that case his conduct would be fraudulent." (*Callisher* v. *Bischoffsheim* [9] at p. 452).

In the final result, I have no doubt whatever that respondent in this case had a lawful and enforceable claim, and that the judgment of the learned Magistrate was right from start to finish. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Thomas & Co.; Battenberg & Talma.*